

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

B. BRAUN MELSUNGEN AG &)	
B. BRAUN MEDICAL INC.,)	
)	
Plaintiffs,)	
)	Civil Action No. 09-347 (JJF)
v.)	
)	Jury Trial Demanded
TERUMO MEDICAL CORPORATION &)	
TERUMO CORPORATION,)	
)	
Defendants.)	

[PLAINTIFFS' PROPOSED] RULE 16 SCHEDULING ORDER

Plaintiffs B. Braun Melsungen AG and B. Braun Medical Inc. (collectively "Braun") respectfully submit this Proposed Rule 16 Scheduling Order in connection with the Scheduling Conference set for July 8, 2009. Plaintiffs served this Court's June 18, 2009 Order setting the July 8, 2009 Scheduling Conference on Terumo Medical Corporation and Terumo Corporation ("collectively "Defendants") on June 19, 2009. Plaintiffs first became aware of the identity of litigation counsel for Defendants on June 30, 2009; the following morning, Plaintiffs served this Proposed Rule 16 Scheduling Order on counsel for Defendants, and requested that Defendants provide comments and meet and confer to permit the parties to file a joint statement this morning. Defendants have not yet submitted any counter-proposal or comments, and have expressed in a July 2, 2009 communication with the Court their preference to move the hearing date. Given the presently scheduled date of the hearing, Plaintiffs hereby submit their Proposed Rule 16 Scheduling Order and will cooperate with Defendants to try to resolve or narrow any differences and submit a joint order in advance of the hearing.

1. Pre-Discovery Disclosures.

The parties will exchange by July 31, 2009 the information required by Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.1.

2. Joinder of other Parties.

All motions to join other parties shall be filed on or before August 21, 2009.

3. Settlement Conference.

Pursuant to 28 U.S.C. §636, this matter is referred to Magistrate Judge _____ for the purposes of exploring the possibility of a settlement. If the parties agree that they would benefit from a settlement conference, the parties shall contact the Magistrate Judge to schedule a settlement conference so as to be completed no later than the Pretrial Conference or a date ordered by the Court.

4. Discovery.

(a) Exchange and completion of contention interrogatories, identification of fact witnesses and document production shall be commenced so as to be completed by October 30, 2009.

(b) Maximum of 25 interrogatories, including contention interrogatories, for each side.

(c) Maximum of 50 requests for admission by each side.

(d) Maximum of 70 deposition hours by each side, including non-party depositions, but excluding expert depositions. The presumptive seven (7) hour limit per deponent of Fed. R. Civ. P. 30(d)(1) shall apply, but the ten (10) deposition limit of Fed. R. Civ. P. 30(a)(2)(A)(i) shall not apply.

(e) Reports from retained experts required by Fed. R. Civ. P. 26(a)(2) are due from the party with the burden of proof on the issue the expert is offered by January 8, 2010. Rebuttal

expert reports are due by January 29, 2010. Expert depositions shall be completed by February 22, 2010.

(f) Service of all pleadings and other papers identified in Fed. R. Civ. P. 5(a) shall be via email delivery. The provisions for additional time pursuant to Fed. R. Civ. P. 6(d) shall not apply.

5. Non-Case Dispositive Motions.

(a) Any non-case dispositive motion, along with an Opening Brief, shall be filed with a Notice of Motion. The Notice of Motion shall indicate the date on which the movant seeks to have the motion heard. The hearing date selected shall allow time for filing of the motion, allow for briefing in accordance with the Federal and Local Rules, and shall permit all briefing to be filed no later than 12:00 noon the Friday before the motion day on which it is to be heard. Available motion dates will be posted on the Court's website at:

<http://www.ded.uscourts.gov/JJFmain.htm>

(b) At the motion hearing, each side will be allocated ten (10) minutes to argue and respond to questions from the Court.

(c) Upon filing of the Notice of Motion, a copy of said Notice shall be sent to Chambers by-email at:

jjf_civil@ded.uscourts.gov

6. Amendment of the Pleadings.

All motions to amend the pleadings shall be filed on or before November 6, 2009.

7. Case Dispositive Motions.

Any case dispositive motions, pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on or before March 5, 2010. Briefing shall be pursuant to

D. Del. LR 7.1.2. The parties shall follow the Court's procedures for summary judgment motions which is available on the Court's website at:

<http://www.ded.uscourts.gov/JJFmain.htm>

8. Markman.

A Markman Hearing, if necessary, will be held on October 22, 2009. By September 7, 2009, (forty-five (45) days before the Markman Hearing), each party shall exchange a list of proposed claim terms that the party contends should be construed by the Court and proposed constructions of those claim terms. The parties shall file opening claim construction briefs by September 17, 2009 (thirty-five (35) days prior to the Markman Hearing), and opposition claim construction briefs by October 2, 2009 (twenty (20) days prior to the Markman Hearing). The Court, after reviewing the briefing, will allocate time to the parties for the hearing. Argument shall be limited to one (1) hour per side.

9. Applications by Motion.

(a) Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective June 30, 2007). Any nondispositive motion shall contain the statement required by D.Del. LR 7.1.1 and be made in accordance with the Court's February 1, 2008 Order on procedures for filing non-dispositive motions in patent cases. Briefs shall be limited to no more than ten (10) pages. Parties may file stipulated and unopposed Orders with the Clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

(b) No facsimile transmissions will be accepted.

(c) No telephone calls shall be made to Chambers.

(d) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: jjf_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency.

10. Pretrial Conference and Trial.

(a) The parties shall appear for a Pretrial Conference on [COURT AVAILABLE DATE IN APRIL 2010], in Courtroom 4B on the 4th Floor, United States Courthouse, Boggs Federal Building, Wilmington, Delaware. The Federal Rules of Civil Procedure and D. Del. Local Rule 16.3 shall govern the conference.

(b) A seven (7) day jury trial will commence on [COURT AVAILABLE DATE IN MAY 2010], in Courtroom 4B on the 4th Floor, United States Courthouse, Boggs Federal Building, Wilmington, Delaware.

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DATE

UNITED STATES DISTRICT JUDGE